*** THE HON'BLE SRI JUSTICE A. RAJASHEKER REDDY**

+ C.R.P.Nos.2628, 2650 & 6226 of 2006

% 11.10.2013

C.R.P.No.2628 of 2006

Kamisetti Krishna and 11 others

…. Petitioners

AND

Kanchumarthi Venkata Ramanamma and 5 others

…. Respondents

C.R.P.No.2650 of 2006

Kamisetti Krishna and 11 others

…. Petitioners

AND

Kanchumarthi Venkata Ramanamma and 5 others

…. Respondents

C.R.P.No.6227 of 2006

Nakka Venkata Rao

…. Petitioners

AND

Kanchumarthi Venkata Ramanamma and 5 others

…. Respondents

! Counsel for Petitioners: Sri N. Vijay

^ Counsel for Respondents: Sri P. Venugopal

< Gist:

> Head Note:

? Cases referred:

1. AIR 1954 Travencore-Cochin 152
2. 1961 Calcutta 359
3. 1966 ALD 280
4. AIR 1940 Patna 683
5. AIR 2007 AP 137
6. AIR 1959 AP 272
7. AIR 1954 SC 355
8. AIR 1967 Supreme Court 341
9. (2004) 8 Supreme Court Cases 588
10. 2010 (5) Supreme Court Cases 104
11. 2008 (15) Supreme Court Cases 673
12. 1994 (6) Supreme Court Cases 117
13. 2005 (4) Andhra Law Times 235
14. 2002 (8) Supreme Court Cases 400
15. AIR 1954 Travancore-Cochin 152
16. AIR 1961 Calcutta 359
17. 1966 Andhra Law Times 280
18. AIR 1940 Patna 683
19. AIR 1954 Supreme Court 355
20. AIR 1967 Supreme Court 341
21. (2004) 8 Supreme Court Cases 588
22. (2010) 5 Supreme Court Cases 104
23. (1994) 6 Supreme Court Cases 117
24. 2005 (4) Andhra Law Times 235
25. (2002) 8 Supreme Court Cases 400

HON'BLE SRI JUSTICE A. RAJASHEKER REDDY

Civil Revision Petition Nos.2628, 2650 and 6226 of 2006

Date: -10-2013

C.R.P.No.2628 of 2006

Between:

Kamisetti Krishna and 11 others

.. Petitioners

AND

Kanchumarthi Venkata Ramanamma and 5 others

.. Respondents

C.R.P.No.2650 of 2006

Between:

Kamisetti Subba Rao and 7 others

.. Petitioners

AND

Kanchumarthi Venkata Ramanamma and 5 others

.. Respondents

C.R.P.No.6227 of 2006

Between:

Nakka Venkata Rao

.. Petitioners

AND

Kanchumarthi Venkata Ramanamma and 5 others

.. Respondents

HON'BLE SRI JUSTICE A. RAJASHEKER REDDY

Civil Revision Petition Nos.2628, 2650 and 6226 of 2006

COMMON ORDER:

Since common questions of fact and law are involved in these three Civil Revision Petitions, they are being disposed of by this common order.

2. The C.R.P.No.2628 of 2006 is directed against the order dated

21-12-2005 in A.T.A.No.80 of 2000 passed by the Appellate Authority under the A.P. (Andhra Area) Tenancy Act-cum-Principal District Judge, East Godavari at Rajahmundry, whereby and whereunder the appeal was dismissed confirming the order dated 24-05-2000 in A.T.C.No.22 of 1993 passed by the Special Officer under Andhra Tenancy Act-cum-Principal Junior Civil Judge, Rajahmundry.

3. The C.R.P.No.2650 of 2006 is directed against the order dated

21-12-2005 in A.T.A.No.79 of 2000 passed by the Appellate Authority under the A.P. (Andhra Area) Tenancy Act-cum-Principal District Judge, East Godavari at Rajahmundry, whereby and whereunder the appeal was dismissed confirming the order dated 24-05-2000 in A.T.C.No.23 of 1993 passed by the Special Officer under Andhra Tenancy Act-cum-Principal Junior Civil Judge, Rajahmundry.

4. The C.R.P.No.6227 of 2006 is directed against the order dated

14-09-2006 in A.T.A.No.30 of 2005 passed by the Appellate Authority under the A.P. (Andhra Area) Tenancy Act-cum-Principal District Judge, East Godavari at Rajahmundry, whereby and whereunder the appeal was dismissed confirming the order dated 15-06-2005 in A.T.C.No.45 of 1997 passed by the Special Officer under Andhra Tenancy Act-cum-Principal Junior Civil Judge, Rajahmundry.

5. The brief facts, which are necessary for disposal of the revision petitions, are that the petition schedule lands originally belonged to Kanchumarthi Seeta Ramachandra Rao, who is father

of Pardhasaradhi, Venkata Subba Rao and Venkata Seetharamarao, were leased out by late Sri Kandula Narasimha Rao to the forefathers of the petitioners about 70 or 80 years back for cultivation. The forefathers and later the fathers of the petitioners raised mango trees in the dry lands. After the death of Kanchumarthi Seeta Ramachandra Rao, his sons, Pardhasaradhi, Venkata Seetharama Rao and Venkata Subba Rao inherited the schedule lands, which were managed by late Pardhasaradhi. Venkata Subba Rao died on 29-11-1984 and his 1/3rd share fell to R-1 and R-2 by virtue of Will executed by him. Venkata Seetharamarao died on 03-12-1987 and his share was inherited by his adopted son Venkata Seetha Ramachandra Rao- R-3. During the life time of Pardhasaradhi, he used to realize the rents from the forefathers and fathers of the petitioners and later on from the petitioners. After the death of Pardhasaradhi, the 1st respondent has been collecting the rents from the petitioners and the petitioners have been raising dry crops in dry lands in between mango trees and paddy crop in the wet lands. The rent was enhanced from time to time for the last 5 years and the petitioners have been paying the annual rent of Rs.14,000/-. In the year 1990 some Mandal Sattiah and others tried to occupy the schedule lands and other lands by force and when the cultivating tenants expressed their apprehension that they could not resist their force, the 1st respondent and some of the petitioners filed O.S.No.168 of 1990 on the file of Subordinate Judge's Court, Rajahmundry for permanent injunction, wherein the 1st respondent stated that the plaintiffs therein and their forefathers have been in continuous possession and enjoyment of the lands as cultivating tenants and the said lands were never under the personal cultivation of the respondents or their predecessors-in-interest. When the

petitioners approached the 1st respondent to pay the rent, she demanded for enhancement of rent to Rs.25,000/- from 1992-1993 and refused to receive the rent of Rs.14,000/-. Despite several approaches by the petitioners, the 1st respondent was adamant. When the petitioners sent Rs.14,000/- by banker's cheque dated 14-05-1993 in favour of the 1st respondent, she returned the same with a registered notice dated 18-05-1993 with false allegations that the petitioners are not tenants. The schedule lands are garden lands and they used to sell the usufructs by way of remuneration and they used to pay 1/3rd of realization to the watchman appointed by the husband and brothers of the 1st respondent. When the State Government tried to take the possession of the lands as excess lands to be surrendered under the Land Ceiling Act, the 5th petitioner and others filed LRA 133 of 1992 on the file of Land Reforms Appellate Tribunal, Kakinada questioning the action of the Government in taking possession of the lands under their cultivation and obtained stay order. All the villagers of Nidigatla Gadala and Madhurapudi are aware that the petitioners are cultivating tenants to the schedule lands.

6. The 2nd respondent filed his counter stating that the petitioners are not cultivating tenants to the schedule lands, which are garden lands. The petitioners are not in possession of the schedule land at any time and there is no landlady and tenant relationship between the respondents and the petitioners. The payment of rent is false. The petitioners and others played fraud on the 1st respondent in the absence of the 2nd respondent, who is managing and looking after the sale of usufructs of the gardens in the schedule lands. The petitioners procured her signatures on the plaint and other pleadings in O.S.No168 of 1990. The

pleadings in the said suit in the name of the 1st respondent are not true, valid and binding on the respondents. The steps are being taken to nullify the fraudulent proceedings. She further contended that the 1st respondent never demanded for enhancement of rent. The respondents are exclusively enjoying the schedule garden lands. The correspondence exchanged between the petitioners and respondents show falsity of the petitioners' claim. At no point of time, petitioners cultivated the schedule lands and raised crops. The petition is not maintainable since all necessary parties are not impleaded as respondents. This petition, if filed with malafide intention to give entry into the lands of the respondents under the guise of injunction order.

7. The 3rd respondent also filed counter stating that as per preliminary decree in O.S.No.189 of 1987 on the file of Subordinate Judge's Court, Rajahmundry, the petition schedule lands and other lands are to be partitioned in three equal shares and one such share to be added to this respondent and the remaining two shares to the respondents 1 and 2. In the said decree, it was directed that the 2nd respondent to render account to this respondent for Rs.6,283-29 ps. for the year 1985-96 and further directed the respondents 1 and 2 to render account for future profits i.e., from 1986-87 onwards. The final decree proceedings are pending in the above suit. This respondent is a minor. His father Venkata Seetharama Rao died in 1987 from which time, the respondents 1 and 2 alone have been managing the petition schedule lands. The dispute in question in this petition is in the personal knowledge of the respondents 1 and 2 and this respondent has no knowledge about the same. Subject to the rights of this respondent in decree in O.S.No.189 of 1987 accounts

of the income in the schedule lands to be rendered by the respondents 1 and 2, this respondent abides by the decision of the court.

8. The trial Court dismissed A.T.C.No.22 of 1993, A.T.C.No.23 of 1993 and A.T.C.No.45 of 1997 respectively on the ground that the petitioners failed to establish that there is landlord and tenant relationship between the petitioners and the respondents and there is no useful information elicited from the evidence of the respondents witnesses to prove that there is landlord and tenant relationship and that mere possession of the property recently by the petitioners does not give any right to claim the petitioners as tenants and that the petitioners, who are legal heirs of Kamisetti Subbanna and Venkata Rao, cannot get any tenancy rights over the schedule lands. Aggrieved by the common order dated 24-05-2000 in A.T.C.No.22 of 1993 and A.T.C.No.23 of 1993, the petitioners filed A.T.A.No.80 of 2000 and A.T.A.No.79 of 2000 respectively and also aggrieved by the order dated 15-06-2005 passed in A.T.C.No.45 of 1997, the revision petitioners herein filed A.T.A.No.30 of 2005 before the Appellate Authority-cum-Principal District Judge, East Godavari District at Rajahmundry. The Appellate Court dismissed the said appeals confirming the order of the Special Officer under the Authority. Challenging the said orders, the present Civil Revision Petitions have been filed.

9. Sri N. Vijay, learned counsel for the petitioners contended that the Courts below have not properly considered the admissions made by the 1st respondent, who is plaintiff in O.S.No.168 of 1990. He contends that the 1st respondent, who is plaintiff in O.S.No.168 of 1990 clearly admitted that the revision petitioners are the tenants in respect of suit schedule premises and that when

once the said admissions were made in the pleadings, the same have to be taken into consideration and the same were also not retracted. As such, the admissions have to be taken and the revision petitioners should have been declared as permanent tenants under Section 6 of the Act. He also contends that the evidence of PWs.5 and 6 V. Ramakrishna Bhaskara Rao and Nakka Kondala Rao has not been considered properly. He contends that PW.6, who is plaintiff No.10 in O.S.No.168 of 1990, was not cross-examined and his chief examination goes unchallenged, which can be the basis for declaring the revision petitioners as tenants. He also contended that Venkat Rao who is plaintiff No.9 in O.S.No.168 of 1990 is not examined and that the two affidavits were marked as Exs.B.17 and B.18 in spite of objections being raised. He also contended that evidence of PW.7, who is petitioner No.1 in A.T.C.No.23 of 1993, was not properly considered. He also contends that O.S.No.89 of 1996 filed R.5 against wife of Venkata Rao is also dismissed. He also contended that ExB.17 could not have been marked as N. Venkata Rao is not alive. He contends that the Appellate Court has not considered other evidence except the effect of admissions in O.S.No.168 of 1990. He also contended that as per the provisions under Order VI Rule 4 CPC, the particulars regarding dates and other aspects have to be given, but in the present case no such particulars are given. He also contends that in the counter filed by the respondent-landlord, there is a bare denial and no particulars about the fraud were given. Though plea of fraud is taken, there is nothing stated in evidence about the fraud pleaded. He also contends that once fraud is pleaded on one aspect, another fraud cannot be proved. In support of his contentions, he placed reliance in judgments in **Velu Pillai Padakalingam v.**

Paramanandam Yesudasan[1], **A.E.G. Garapiet v. A.Y. Derderian**[2], **The Commissioner, Hindu Religious and Charital Endowments, Hyderabad**[3], **Karnidan Sarda and another v. Sailaja Kanta Mitra**[4], **Peddavandla Narayanamma v. Peddasani Venkata Reddy and others**[5], **Jayalakshmidevamma v. Janardhan Reddy**[6], **Nathoo Lal v. Durga Prasad**[7], **Basanth Singh v. Janki Singh and others**[8]. In respect of the plea of fraud, he placed reliance on **A.C. Ananthaswamy and others v. Boraiah**[9], **Shanti Budhiya Vesta Patel and others**[10], **Ranganayakamma and another v. K.S. Prakash and others**[11] and **Bijendranath Srivastava v. Mayank Srivastava and others**[12].

10. On the other hand, Sri P. Venugopal, learned counsel for the respondents, contends that the petitioners are not cultivating tenants as per Section 2 (c) of the A.P. (Andhra Area) Tenancy Act, 1956 and they are only intermediaries. He contends that as the lands are only orchards, as per Section 18 (1) (b) of the Act, the Act has no application to the petition schedule lands. He also contends that the pleadings in petitions filed under Section 16 of the Act by the petitioners are vague wherein at para-3 the revision petitioners stated that mango trees are in existence and in para-5, they stated that there are dry crops in the suit schedule lands. He contended that there are inconsistencies in the pleadings. He contended that when once it is garden, as per Section 18 (1) (b) of the Act, the Act has no application. He contended that no revenue records are filed to prove the tenancy except giving some oral

statements. He further contended that as it is a case of tenants and the fathers and forefathers of the revision petitioners are continuing as tenants, they should have filed some revenue records to establish the same, but no such revenue record was filed. He further contended that tenancy should be proved at least by producing revenue records. In support of this contention, he relied on in **Namburi Bangarraju v. Indukuri Satyanarayanaraju and others**[13]. He contends that the petitioners have to establish their own case and not depend on the weakness of the respondents even when the respondents have taken inconsistent in their pleadings. It is for the petitioners to prove that they are cultivating tenants and there is no clinching evidence to prove that the petitioners are tenants. He also contends that proceedings in civil courts cannot be relied upon, while dealing with the matters under special enactments. He further contended that the respondents have clearly shown under what circumstances admissions were made in O.S.No.168 of 1990 and basing on such admissions, the revision petitioners cannot ask for declaring them as tenants without leading any independent evidence. In what circumstances O.S.No.168 of 1990 was filed was explained by the respondents and both the Courts below accepted the same, and as such, no interference is called for in this revision petitions. He contends that the revisional jurisdiction under Article 227 of the Constitution of India can be exercised only for correcting patent errors and evidence cannot be re-appreciated and came to a different conclusion. He also contends that all errors cannot be corrected under Article 227 of the Constitution of India as the revisional jurisdiction under Article 227 is very limited. He relied on the judgment reported in **Essen Deinki v. Rajiv Kumar**[14].

11. On the other hand, in reply to the arguments of the learned counsel for the respondents, the learned counsel for the revision petitioners contends that there is no pleading as the land falls under Section 18 (1) (b) of the Act and that Advocate Commissioner's report says that dry and wet crops form part of suit schedule fields. He contended that when once the jurisdictional fact is not pleaded, the same cannot be raised. He contends that after the pleadings, the party should lead evidence only in respect of that pleadings but not otherwise. He also contends that the respondents have taken different stand at different times and that in O.S.No.168 of 1990, the respondents have taken the plea that the revision petitioners are tenants and in another suit filed, they have taken plea that the revision petitioners are trespassers and in the present proceedings, they have taken a plea that they are only watchman. He also contends that the admission is best piece of evidence. Neither the evidence of RW.1, RW.5 nor the evidence of RW.6 any way stated about the fraud.

12. In view of the rival contentions, the issues that fall for consideration in this revision petition are,-

1) Whether the petitioners are cultivating tenants in the schedule lands, if so, whether they are entitled for declaration under Section 16 of the Act;

2) Whether they are entitled for consequential relief of perpetual injunction.

13. The revision petitioners mainly relied on the admissions made by the 1st respondent in the plaint in O.S.No.168 of 1990 on the file of Subordinate Judge's Court, Rajahmundry. It was filed by the 1st respondent and the revision petitioners against the third parties who occupied the lands of the respondents' family. Ex.A.4

is the certified copy of plaint, which was filed in respect of Ac.117.26 cents in Nidigatla village, Ac.14.08 cents in Gadala village and Ac.6.30 cents in Madurapudi village of Korukonda Mandal. The said suit was filed for permanent injunction restraining the defendants therein from interfering with the plaintiffs' possession and enjoyment of the plaint schedule properties. In the plaint, it was stated that the plaintiffs therein have been in possession and cultivation of those lands by way of the 1st plaintiff, who is 1st respondent herein, leasing out the same to the other plaintiffs, who are petitioners herein. The respondents have explained the admission and the evidence of RW.1 show in what circumstances admissions were made and how it is not binding. RW.1 deposed that except the 3rd petitioner, she does not know the other petitioners and that she knows Subba Rao as watchman on salary basis and that she never leased out the petition schedule property to the petitioners and that the lands are not fit for cultivation. She says that about five or eight years ago her watchman Subba Rao informed her that Nexalites high handedly were trying to encroach into the schedule land, and at that time she was alone and her daughter who is the 2nd respondent was in the States and that she told the watchman to meet her advocate RW.6 and that the watchman brought some English typed papers and ask her to sign those papers and that when she expressed that she cannot understand or read English, Subba Rao informed her that the advocate has signed those papers. She says that nobody read out the contents to her and that she has signed in those papers and that she did not know contents of the typed papers on which Subba Rao obtained her signatures and that after obtaining her signatures Subba Rao took those papers to her advocate for filing case for the purpose of

preventing of Naxalites entering into the lands. She categorically says that she did not instruct or inform her advocate RW.6 or any other person that the petitioners are their tenants. She further says that after the 2nd respondent returned from America, RW.1 informed her about Subba Rao collecting her signatures on typed English papers on the pretext of preventing Nexalites from entering into lands and that thereupon the 2nd respondent enquired RW.6 and came to know about mentioning of the petitioners as tenants in the schedule lands in those papers and that thereafter, she filed a petition in the Civil Court stating that she did not voluntarily admit the petitioners as tenants and also explaining circumstances in which she signed in those papers. RW.1 says that she cannot read or write English and that she only learnt signing in English. In cross-examination, she deposed that she does not know whether her application to withdraw from the suit denying the contents of the plaint, was dismissed.

14. RW.4 is the registered pleader's clerk under RW.6. He deposed that RW.1 did not come to their office for the purpose of filing O.S.No.168 of 1990 and that her signatures were taken in the plaint at her house. He says that the 2nd petitioner and two or three others of Kamisetti people went to RW.1's house and obtained her signatures. He says that he also accompanied them and that neither himself nor other persons read out contents of the plaint nor RW.1 read the contents of the plaint. He says that the 2nd petitioner and others came, got drafted the plaint and the suit was filed as out of order hurriedly and ad-interim injunction order was obtained.

15. RW.6, who was a practicing advocate at Rajahmundry since 1958 and who was the counsel for the 1st respondent’s

family in several litigations, deposed that he drafted Ex.A.4-plaint in O.S.No.168 of 1990 on the instructions of three or four plaintiffs out of plaintiffs 3 to 12 in the suit. He stated that RW.1, who is plaintiff in O.S.No.168 of 1990, never gave any instructions in that matter and that the 2nd respondent was giving instructions relating to their affairs after the death of Partha Saradi. The 2nd respondent as RW.5 says that she was out of India when the suit O.S.No.168 of 1990 was filed. RW.6 further states that his clerk RW.4 went and obtained signatures of RW.1 in the plaint and that as soon as the tenancy claim was made by the plaintiffs 2 to 13 and the same was denied by the 1st plaintiff in that suit (RW.1), he reported no instructions for the plaintiffs 2 to 13 and filed an application on behalf of the 1st plaintiff to transpose plaintiffs 2 to 13 as defendants in that suit and that the said application was dismissed advising separate steps have to be taken. He further stated that he believed the version of those persons who gave instructions to him for drafting Ex.A.4 plaint and drafted the same. RW.6 in his cross-examination, he categorically says that he prepared the plaint in O.S.No.168 of 1990 without specific instructions of RW.1. He says that the relevant papers were brought by three or four people out of the plaintiffs 3 to 13 in O.S.No.168 of 1990 and the said persons followed the 2nd respondent Subba Lakshmi to his office and that Subba Lakshmi used to give instructions in some of the occasions earlier to the said suit. He stated that because those persons accompanied Subba Lakshmi on earlier occasion, RW.6 believed the representations of the persons out of the other plaintiff in O.S.No.168 of 1990 and prepared Ex.A.4 plaint therein.

The 1st respondent, apart from examining herself as RW.1, examined her counsel RW.6 and pleader's clerk RW.4 to explain

the circumstances under which her signatures came on the plaint in O.S.No.168 of 1990. RW.6 who is responsible advocate also deposed that Ex.A.4 was prepared without instructions from RW.1. Both the Courts below have relied on evidence of RW.1, 4 and 6 and after assessing their evidence with reference to the attending circumstances prevailing during the time of filing of O.S.No.168 of 1990, held that in order to save those lands from the occupation of Raithu Cooli Sangham backed by Naxalites, the 1st respondent and other petitioners joined together and came forward with the theory of tenancy in favour of the plaintiffs 2 to 13 therein for the first time and hurriedly filed the plaint as out of order and obtained *ex parte* interim injunction. The Courts below have examined those admissions and found that they were made in those circumstances in order to protect the lands from the third parties. The Courts below found that the said solitary averment in Ex.A.4 cannot clothe the revision petitioners with any tenancy rights in the petition schedule lands. The Courts below also found that at no point of time the names of the petitioners were shown in the revenue records or the land ceiling declarations and verification reports as tenants in occupation and cultivation of the schedule lands and it is only for the first time their names cropped up as tenants in the plaint filed in O.S.No.168 of 1990, which were made by the 1st respondent only under those circumstances. But that cannot be taken advantage as admission for the purpose of coming to a conclusion that the revision petitioners are tenants. Therefore, the Courts below have not accepted the case of the respondents and observed that the said admissions are made only in the circumstances prevailing and the same cannot be used against the respondents. The Courts below also came to the conclusion that the same is not binding on the 2nd respondent and

the 3rd respondent, who are not parties to Ex.A.4.

16. In the present case, the Courts below, considering the evidence of the revision petitioners-PWs.1 to 7 and the evidence of RWs.1 to 7, came to the conclusion that except the averment in Ex.A.4 that the revision petitioners are tenants, no evidence is produced by the revision petitioners to show that they are tenants and the evidence adduced by the revision petitioners also does not support the case of the revision petitioners that they are permanent tenants. Both the Courts below basing on the several judgments and by scrutinizing the evidence held that the admissions made by the 1st respondent in the plaint in O.S.No.168 of 1990-Ex.A.4 is not voluntary one and her signature on the plaint and other documents in O.S.No.168 of 1990 were obtained when her daughter was out of India and she was alone in the house. The Courts below also found that the petitioners have to establish their case by independent evidence that there is no landlord and tenant relationship between them and the respondents. The Courts below, after appreciating the evidence found that the petitioners have not established that there is landlord and tenant relationship and there is no useful information elicited from the evidence of the respondents witnesses to prove that there is landlord and tenant relationship to prove the said facts.

17. Learned counsel for the revision petitioners, in support of his contention with regard to effect of non-examination of PW.6, relied on various precedents in **Velu Pillai Padakalingam v. Paramanandam Yesudasam**[15] **A.E.G. Carapiet v. A.Y. Derderian**[16], **The Commissioner, Hindu Religious and Charitable Endowments, Hyderabad v. Mudlamuri Ayyavurayya**[17], **Karnidan Sarda and another v. Sailaja Kanta**

Mitra[18] to contend that since PW.6 was not cross-examined, the same should be taken as unchallenged evidence. All the decisions state that any witness is not cross-examined on any aspect by either side, his evidence goes unchallenged and the same has to be believed. There is no quarrel regarding the said principle. But, in the present case, except the oral evidence, no revenue records were produced showing that the revision petitioners or the predecessors-in-title or the ancestors are permanent tenants. As such, the evidence of PW.6 alone cannot be a ground to declare the revision petitioners as permanent tenants. The Courts below have found that they have not adduced sufficient evidence for declaring them as permanent tenants. That being a question of fact, whether the evidence is sufficient or not cannot be a ground to reassess or hold that the evidence is not sufficient by reappreciating the evidence in these revisions.

18. In **Nathoo Lal v. Durga Prasad**[19], the Supreme Court held that what is admitted by a party to be true must be presumed to be true unless the contrary is shown. But, in the present case, the admission made by the 1st respondent in Ex.A.4 are clearly explained by leading evidence under what circumstances the admissions were made and the Courts below found that the same can be held against the respondents in view of the circumstances in which it was made. As such, this decision has no application to the facts of the case.

19. In **Basanth Singh v. Janki Sing and others**[20], the Apex Court held that under Indian law, an admission made by a party in a plaint signed and verified by him may be used as evidence against him in other suits. In other suits, this admission cannot be regarded as conclusive, and it is open to the party to

show that it is not true. This decision supports the case of the respondents since the respondents had let in evidence and shown that the admission made by the 1st respondent in Ex.A.4 is not true and the same was believed by the Courts below, which is a question of fact and the same cannot also be interfered with in exercise of revisional jurisdiction by appreciating the evidence.

20. In **A.C. Ananthaswamy and others v. Boraiah**[21], the Apex Court held as under:

> ".....To prove fraud, it must be proved that representation made was false to the knowledge of the party making such representation or that the party could have no reasonable belief that it was true. The level of proof required in such cases is extremely higher. An ambiguous statement cannot per se make the representor guilty of fraud. To prove a case of fraud, it must be proved that the representation made was false to the knowledge of the party making such representation. ...."

21. In the present case, the Courts below, on assessing the evidence of the respondents, held that the admission was made under certain circumstances and found the same to be not true. It is also a question of fact, which cannot be interfered with. As such, the decision cited above also has no application to the facts of the present case.

22. In **Shanti Budhiya Vesta Patel and others v. Nirmala Jayaprakash Tiwari and others**[22], the Apex Court held as follows:

> ".... It is a plain and basic rule of pleadings that in order to make out a case of fraud or coercion, there must be an express allegation of coercion or fraud, and (b) all the material facts in support of such allegations must be laid out in full and with a high degree of precision. In other words, if coercion or fraud is alleged, it must be set out with full particulars....."

23. In the present case, the facts are different from the facts

before the Supreme Court. It is a case where under special circumstances, 1st respondent signed Ex.A.4 and through the evidence, she proved that the admission made is not true. As such, this decision has no application to the present case.

24. In **Bijendra Nath Srivastava v. Mayank Srivastava and others**[23], the Apex Court held as follows:

> "..... This is in consonance with the rule that a charge of fraud must be substantially proved as laid and that when one kind of fraud is charged, another kind of fraud cannot, upon the failure of proof, be substituted for it. The same is true for the charge of misconduct. This means under Order 6 Rule 4 CPC particulars have to be furnished of the plea of fraud or misconduct raised in accordance with Order 6 Rule 2 CPC and it is not permissible to introduce by way of particulars a plea of fraud or misconduct other than that raised in the pleadings....."

In view of the evidence led by the respondents in the present case, the Courts below came to the conclusion that the admission made by the respondents is not true and except the admission, there is no independent evidence or revenue record to show that the petitioners are continuing as tenants. As such, this decision has no application to the present case.

25. In **Namburi Bangaraju v. Indukuri Satyanarayanaraju and others**[24], the Apex Court held as follows:

> ".....The petition schedule property is situated in adjoining village where revenue records are maintained meticulously. If really the land was under possession of the petitioner and his father for the past half a century, it would certainly have been reflected in one category of the revenue records or the other. The petitioner did not file any such records. He tried to cover up his lapse at the appellate stage by filing Ex.A.2, a certificate issued by the Secretary, Gram Panchayat to the effect that the land is part of Gramakantam (village site) and that the pattadar pass books are not issued for such land. The appellate Court had examined the same and took the view that even if the pattadar pass books cannot be issued for such land, there is no prohibition for issuance of 10(1)

> account. A tenancy, to receive the protection under the Act and exposing the landowners to severe disadvantage is required to be supported either by written documents between the parties, or entries in the revenue records. Mere oral assertion does not serve the purpose. The failure on the part of the petitioner to file any such records establishes that he was not at all in possession of the property, much less a tenant thereof.....

26. In **Essen Deinki v. Rajiv Kumar**[25], the Apex Court held as follows:

> ".....It is merely a revisional jurisdiction and does not confer an unlimited authority or prerogative to correct all orders or even wrong decisions made within the limits of the jurisdiction of the courts below. the finding of fact being within the domain of the inferior tribunal, except where it is a perverse recording thereof or not based on any material whatsoever resulting in manifest injustice, interference under the article is not called for.
>
> ..... Needless to record that there is total unanimity of judicial precedents on the score that error must be that of law and patently on record committed by the inferior tribunal so as to warrant intervention-it ought not to act as a court of appeal and there is no dissension or even a contra-note being sounded at any point of time till date. Incidentally, the illegality, if there be any, in an order of an inferior tribunal, it would however be a plain exercise of jurisdiction under the article to correct the same as otherwise the law courts would fail to subserve the needs of the society since illegality cannot even be countenanced under any circumstances....."

27. In view of the aforesaid discussion, it is to be seen that the revisional jurisdiction does not confer an unlimited authority or prerogative to correct all orders or even wrong decisions within the limits of jurisdiction of the courts below. The finding of fact is within the domain of the inferior tribunal, except where it is a perverse recording thereof or not based on any material whatsoever resulting in manifest injustice, interference under Article 227 of the Constitution of India is not called for. As such, I

do not find any infirmity or error in the orders passed by the Courts below warranting interference of this Court by exercising the restricted revisional jurisdiction under Article 227 of the Constitution of India. Therefore, the Civil Revision Petitions are liable to be dismissed.

Accordingly, the Civil Revision Petitions are dismissed. No costs.

As a sequel thereto, Miscellaneous Petitions, if any, pending shall stand closed.

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A. RAJASHEKER REDDY, J

Date: -10-2013

Note: L.R. Copy to be marked.

B.O./Ksn

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[1] AIR 1954 Travencore-Cochin 152

[2] 1961 Calcutta 359

[3] 1966 ALD 280

[4] AIR 1940 Patna 683

[5] AIR 2007 AP 137

[6] AIR 1959 AP 272

[7] AIR 1954 SC 355

[8] AIR 1967 Supreme Court 341

[9] (2004) 8 Supreme Court Cases 588

[10] 2010 (5) Supreme Court Cases 104

[11] 2008 (15) Supreme Court Cases 673

[12] 1994 (6) Supreme Court Cases 117

[13] 2005 (4) Andhra Law Times 235

[14] 2002 (8) Supreme Court Cases 400

[15] AIR 1954 Travancore-Cochin 152

[16] AIR 1961 Calcutta 359

[17] 1966 Andhra Law Times 280

[18] AIR 1940 Patna 683

[19] AIR 1954 Supreme Court 355

[20] AIR 1967 Supreme Court 341

[21] (2004) 8 Supreme Court Cases 588

[22] (2010) 5 Supreme Court Cases 104

[23] (1994) 6 Supreme Court Cases 117

[24] 2005 (4) Andhra Law Times 235

[25] (2002) 8 Supreme Court Cases 400